IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1860 OF 2007

Mr.Kevin F. Luis ...Petitioner

V/s.

Deputy Registrar & Ors ...Respondents

Mr.Sandesh Patil with Vikas Mahangare for Petitioner.
Mr.P.I. Khemani AGP for Respondent No.1 & 2.
Mr.A.S. Desai for Respondent No.3.

CORAM : V.M. KANADE, J.

DATED : 16th JULY, 2007.

P.C:-

1. Heard learned counsel for the Petitioner, learned counsel for Respondent Nos.1 & 2 and learned counsel for Respondent No.3.

2. Rule. Rule is made returnable forthwith by consent of parties.

3. The Petitioner takes exception to the order passed by the Deputy Registrar, Co-operative Societies dated 20/04/2006 whereby application filed by the Petitioner herein for division/separation of the Society has been rejected on the ground that the Petitioner had not challenged order passed by the Secretary, Co-operation, who had on

earlier occasion set aside the order of separation which was passed by the concerned authority.

4. It is case of the Petitioner that the he had applied initially for separation of two wings by formation of a separate society. Initially his application was allowed. Appeal preferred against that order filed by the Respondent-Society was dismissed by the Divisional Joint Registrar. However, Secretary, Government of Maharashtra by order dated 03/10/2000 set aside the order of registration of a separate society on the ground that both the lower authorities had not taken into consideration various aspects and more particularly, provisions of Section 18 and rule 17 of Maharashtra Co-operative Societies Act. In the said order, Secretary has observed as under:-

> “From the available record it is clearly seen that the Respondent Nos 4 to 12 demanded the division of the Applicant Society just to cover up and legalise the illegal acts committed by the previous committee of which Shri Kevin Luis, Shri Pandhari Raote and Shri C.B. Gupta, occupants of Luis Villa building were the members. The maintenance of separate accounts by the Luis Villa building cannot be a valid ground for

division of the Applicant Society. Without considering all these aspects the Respondent No.2 has not even gone through the records of the Applicant Society before directing its division. This facts id clear from the various clauses incorporated by him in impugned order. Thus, the impugned order passed by the Respondent No.2 is without any application of mind and without compliance of the mandatory provisions of the said Act relating to the division of a society. It is also observed that the Respondent No.1 also passed his impugned order without application of mind and without scrutiny of records. I, therefore, pass the following order:-

1. Revision Application is allowed.

2. The stay order dated 7.3.2000 is hereby vacated.

3. The order dated 6.2.99 passed by Respondent No.2 and the order dated 28.2.2000 passed by Respondent No.1 are hereby set aside.

4. No order as to costs."

5. The Petitioner accepted the said order and thereafter, according to the Petitioner, after having complied with these directions as was given by the Secretary, Co-operation, filed a fresh application before the concerned authority. However, this application was rejected

on the ground that the Petitioner had not challenged the earlier order.

6. Learned counsel for the Petitioner invited my attention to the observations made by the Secretary, Co-operation in his order dated 3/10/2000. He submitted that the Petitioner after having accepted the said order, had provided particulars which were required to be given under the provisions of Rule 17 and Section 18 of Societies Act. He submitted that the Deputy Registrar had refused to exercise jurisdiction vested in him. Therefore, directions be given by this Court directing to decide the application afresh.

7. Learned counsel appearing on behalf the Respondents on the other hand, submitted that the order passed by the Secretary had become final and the Petitioner not having challenged the said order was not open for the Society to have filed a fresh application on the very same ground on which earlier application has been filed.

8. It is not possible to accept the submissions made by the learned counsel for the Respondents. From the order passed by the Secretary, Co-operation dated 03/10/2000, it is apparent that revision application filed by the Society was allowed on the ground that the

Petitioner herein had not provided particulars regarding distribution of assets and liabilities which is mandatory requirement under aforesaid provisions and also on the ground that there was non-application of mind on the part of lower Appellate Court.

9. In my view, Secretary Co-operation, under these circumstances, ought to have remanded back the matter and directed the Petitioner to furnish particulars as required by the aforesaid provisions. Under these circumstances, since fresh application has been filed, the Respondent No.1 is directed to decide the application which is filed by the Petitioner herein, on merits and in accordance with law as expeditiously as possible. With these directions, Writ Petition is allowed and rule is made absolute in the above terms.

V.M. KANADE, J.